

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
TMR Appreciation Fund, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Year Ended March 31, 1969. :
AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon TMR Appreciation Fund, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

TMR Appreciation Fund, Inc.
c/o Manhattan Fund, Inc.
127 John St.
New York, NY 10038

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of June, 1982.

Ann R. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
TMR Appreciation Fund, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law :
for the Year Ended March 31, 1969 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Victor Braca the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

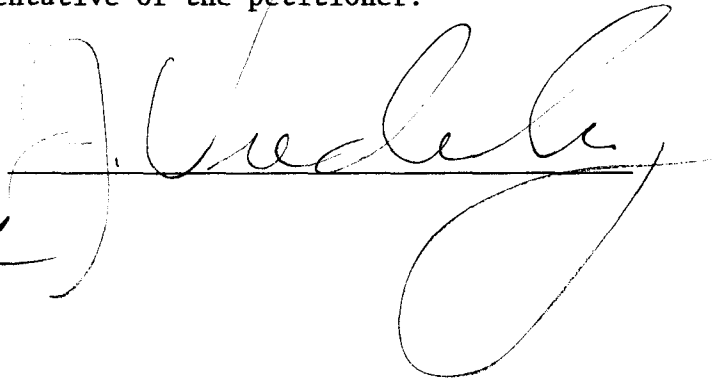
Victor Braca
Coopers & Lybrand
1251 Avenue of the Americas
New York, NY 10020

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
11th day of June, 1982.


Carrie A. Haglund



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 11, 1982

TMR Appreciation Fund, Inc.
c/o Manhattan Fund, Inc.
127 John St.
New York, NY 10038

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Victor Braca
Coopers & Lybrand
1251 Avenue of the Americas
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
TMR APPRECIATION FUND, INC.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year Ended March 31,
1969.

DECISION

Petitioner, TMR Appreciation Fund, Inc., 245 Park Avenue, New York, New York 10017, filed a petition for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal year ended March 31, 1969 (File No. 17796).

Petitioner waived a formal hearing and submitted the case for decision based on the record as it exists.

ISSUE

Whether a corporation that is for federal income tax purposes a regulated investment company is entitled to carryback capital losses for New York franchise tax purposes as if such corporation was not a regulated investment company.

FINDINGS OF FACT

1. Petitioner, TMR Appreciation Fund, Inc. was a regulated investment company as defined in section 851 of the Internal Revenue Code of 1954 for the tax year herein involved.

2. On June 18, 1974, petitioner filed a claim for credit or refund of corporation tax paid under Article 9-A of the Tax Law for the fiscal year ended March 31, 1969 in the amount of \$4,394.00 plus interest.

3. The claimed refund was based on the carryback of a net capital loss petitioner had for the fiscal year ended March 31, 1971.

4. On November 26, 1974, the Corporation Tax Bureau denied the claim for refund in full.

5. On November 26, 1976, petitioner filed a petition for refund protesting the denial of its claim for refund.

CONCLUSIONS OF LAW

A. That for the tax year ended March 31, 1969 petitioner, TMR Appreciation Fund, Inc., was a corporation as defined by section 208.1 of the Tax Law subject to the tax imposed by section 209 of the Tax Law for the privilege of exercising its corporate franchise in this State. The tax is based upon a corporation's entire net income or such other basis which may be applicable under the statute.

B. That section 208.9 of the Tax Law provides, in part:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department..."

C. That section 3.11(b) of a ruling of the State Tax Commission dated March 14, 1962, which was in effect during the years in issue, provided that the starting point in computing entire net income is 'Federal taxable income' as defined in section 63 of the Internal Revenue Code and net "investment company taxable income". *

D. That except as provided by statute, net income for New York State tax purposes is determined in accordance with the principles of Federal income

* This ruling has been readopted in 20 NYCRR 3-2.2(b).

taxation (See People ex rel. Conway Co. v. Lynch, 258 N.Y. 245, 251; Matter of Hemisphere Fund, Inc., State Tax Comm., January 30, 1981).

E. That section 1212(a)(4) of the Internal Revenue Code prohibits regulated investment companies from carrying back net capital losses to prior years. Therefore, insofar as the net capital loss sustained by petitioner in its fiscal year ended March 31, 1971 could not be carried back for Federal tax purposes, it may not be carried back for State tax purposes (Matter of Hemisphere Fund, Inc., State Tax Comm., January 30, 1981, supra). (It is noted that 20 NYCRR 3-7.4, though inapplicable to the years at issue, supports the position of the Commission on whether such losses may be carried back to prior years.)

F. That the petition of TMR Appreciation Fund, Inc. is hereby denied.

DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER